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August 9, 1999

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave.
Washington, DC 20580

SENT VIA E-MAIL

Dear Secretary:

The Commission has requested comments about the Funeral Rule that are based more on fact than opinion and have a substantial impact on the practice and cost of funeral service. The Minnesota Funeral Directors Association first supports in their entirety the recommendations made by the National Funeral Directors Association.

In addition, we offer two recommendations that are based on our recent experience in Minnesota. Last fall, the Commission "swept" more than 50 funeral homes in Minnesota. Five funeral homes were cited for Funeral Rule violations. Our first recommendation is based on the experience of at least one funeral home that was charged with alleged violations. The first time the funeral director/owner learned of the charges was when he received a letter via Federal Express from FTC Regional Office Attorney Nicholas Franczyck on November 9 stating that during to the home on August 18 and October 6 "evidence was obtained that your funeral establishment violated the Rule by failing to show a Casket Price List as required by the Rule." Those are the only facts and evidence provided in the letter before the author provides three full pages of details about the two substantially punitive alternatives available to the funeral home to "resolve the [aforementioned] law violations." The recipient was then given until November 20—10 days—to

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choose one of the two very expensive alternatives: either pay the U.S. Treasury 0.8% of the funeral home's average annual gross sales over the past three years and enroll in the Funeral Rule Offenders Program, or be subjected to a lengthy, comprehensive, costly, and time-consuming defense of a legal action filed by the FTC.

The funeral home in question averages several calls and visits a day, which means that the funeral home had dealt with perhaps as many as 100 families since the second visit, and more than 200 families since the first visit. For them to recall the visits in order to ascertain the validity of the allegations is simply unreasonable. We suggest that such sparse details when combined with the stringent timeline fail to provide alleged violators with either adequate information or time to make an educated decision; nor are alleged violators given due process without incurring substantial legal costs. We suggest that the FTC at the very least provide an opportunity for a preliminary hearing either in person or telephonically, during which full disclosure of evidence can be provided and upon which an alleged violator can make an informed decision about the best course to take for either a defense or resolution.

Our second recommendation emphasizes one of the NFDA's recommendations: to ease the waiver process for states to enforce the Rule's provisions. In Minnesota, the mortuary practice law Chapter 149A, which was enacted in 1997, incorporates all of the Funeral Rule, and then some. Yet, while state health department officials are charged with enforcing that law, federal officials in the FTC are pursuing the same course. This is redundant, wasteful, and unnecessary.

The Minnesota State Department of Health, which regulates morticians in Minnesota, is much better equipped and "in tune" with the regional variances of mortuary care in our state than a federal agency such as the FTC. In addition, 149A is more comprehensive than the Funeral Rule because it already oversees those who are engaged in the sales of funeral goods *or* services. To date, the Department of Health has not been engaged in monitoring 149A's disclosure requirements because of our concerns about "double jeopardy"—funeral homes would be monitored and violators would be reprimanded by two distinct entities. For example, the State did not sanction or penalize any of the five violators cited by your agency. Were the FTC to step aside and allow the State to police its own citizens, enforcement would appropriately increase and be much more effective than enforcement by a Chicago office of a federal agency.

We would appreciate your serious consideration of these recommendations and would be willing to provide more details about the above matters at your request. We also would be interested in participating in your public workshops.

Sincerely,

A handwritten signature in cursive script, reading "Morris Nilsen".

Morris Nilsen, CFSP
President